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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

18 OWEN DIAZ,  
19 Plaintiff,  
20 v.  
21 TESLA, INC. d/b/a TESLA MOTORS, INC.,  
22 Defendant.

Case No. 3:17-cv-06748-WHO

**TESLA'S PROPOSED INSTRUCTION  
REGARDING PAST AND FUTURE  
NONECONOMIC DAMAGES**

Judge: Hon. William H. Orrick

1 Plaintiff has proposed Instruction No. 32 regarding “Return of Verdict.” Dkt. 444. The  
2 purpose of Plaintiff’s proposed instruction is to assist the jury in distinguishing between the “past” and  
3 “future” noneconomic damages that Mr. Diaz seeks. Tesla understands the reason for assisting the  
4 jury in drawing that distinction, but objects to the manner by which Plaintiff proposes to do so. There  
5 is no basis in law or fact to instruct the jury that “past” means anything other than the time before the  
6 date when the jury awards any damages, and “future” means the time afterwards. Any other  
7 definitions would be arbitrary, confusing, and potentially prejudicial. Plaintiff’s proposal for defining  
8 these terms based on the October 2021 date of the first trial is improper because the jury has heard no  
9 evidence that would permit it to draw a distinction between how or whether Mr. Diaz was harmed  
10 before that time or afterwards, and thus, if so instructed, the jury could only award damages based on  
11 speculation and guesswork.

12 The proposed alternative that was discussed at the hearing on March 29—that the delineation  
13 should be based on the date of Dr. Reading’s evaluation of Mr. Diaz in October 2019—fares no better  
14 because the testimony regarding Mr. Diaz’s emotional condition was similarly untethered to that date.  
15 In particular, neither Mr. Diaz nor his daughter La Drea, who are the only fact witnesses who testified  
16 regarding Mr. Diaz’s emotional condition, drew any distinction between his condition before and after  
17 Dr. Reading’s evaluation. This definition, too, would be arbitrary and confusing.

18 Tesla submits that there is no basis to depart from the reality that the jury will be awarding past  
19 and future damages based on the date of its verdict. Assuming the parties have adhered to the Court’s  
20 rulings that required the evidence on this retrial to be cut off as of the date of the first trial, then there  
21 is no risk that the jury’s award of past or future damages could be based on evidence of Mr. Diaz’s  
22 emotional distress from after the date of the first trial. The jury need not also be instructed to so limit  
23 its damages awards.

24 Accordingly, Tesla submits that, if the jury is to be instructed on the distinction between past  
25 and future damages, the instruction should be as follows (which Tesla presents below as a mark-up of  
26 Plaintiff’s proposed instruction):

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1 RETURN OF VERDICT  
2

A verdict form has been prepared for you. The verdict form asks you to designate the amounts of "past" and "future" non-economic damages that Owen Diaz sustained as a result of Tesla, Inc.'s unlawful conduct that has been determined to have subjected Mr. Diaz to a racially hostile work environment. Mr. Diaz's "past" non-economic damages are those you determine he sustained before you render your verdict in this case ~~October 2021, when the first phase of this two phase proceeding was conducted~~. Mr. Diaz's "future" non-economic damages are those you determine he sustained or will sustain after that date you render your verdict.

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10 DATED: March 30, 2023By: /s/ Daniel C. Posner

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